

gr

RICHARD G. HILL, ESQ.
State Bar No. 596
RICHARD G. HILL, LTD.
652 Forest Street
Reno, Nevada 89509
(775) 348-0888
rhill@richardhilllaw.com

Attorneys for Barbara Lynn Lloyd and Red Rock Hounds

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE CINCINNATI SPECIALTY
UNDERWRITERS INSURANCE COMPANY,)

Plaintiff,)

v.)

RED ROCK HOUNDS, a Domestic Nonprofit)
Cooperative Corporation Without Stock (81))
[sic]; LYNN LLOYD, individually; and)
TRACY TURNBOW (Interested Party),)

Defendants.)

Case No. 3:20-cv-0272-MMD-BNW

AND RELATED CLAIMS.)

**MOTION FOR LEAVE TO
FILE AND SERVE FIRST AMENDED COUNTERCLAIM**

Defendants/counterclaimants, RED ROCK HOUNDS and BARBARA LYNN LLOYD, move the Court for leave to file their first amended counterclaim. Events have occurred since the original counterclaim was filed (ECF#11) which necessitate an amendment.

The proposed pleading, *Answer, Affirmative Defenses, and First Amended Counterclaim*, is attached as EXHIBIT 1. The substantive changes to the subject pleading are the addition of the Seventh Claim for Relief. Counterclaimants have already claimed

///

///

1 against their insurer, THE CINCINNATI SPECIALTY UNDERWRITERS INSURANCE
 2 COMPANY ("CSU") for bad faith, but now, based on recent developments, additional claims
 3 are appropriate.

4 Specifically, CSU admits that until this Court decides this case, it remains under
 5 an obligation to provide its insureds with a defense of the claims by Tracy Turnbow. CSU
 6 is presently doing so.¹ As has been made clear in the briefing in this case, the resolution of
 7 CSU's declaratory relief claims against its insureds in this case will require factual
 8 determinations of the veracity of Turnbow's claims against these defendants/counter-
 9 claimants. Presumably, CSU will be aggressively asserting its position in this case in order
 10 to develop facts to demonstrate its putative exclusions appropriately apply to deny its
 11 insureds' coverage. That puts CSU and its insureds into conflicting positions in this case.

12 Because the facts supporting Turnbow's claims are necessary to the resolution
 13 of this case, counterclaimants are entitled to a defense against those factual allegations by
 14 Turnbow, which CSU has put in issue in this case. See, for example, *Century Surety v.*
 15 *Andrew*, 134 Nev. 819, 821, 432 P.3d 180, 184 (2018) ("[The] duty [to defend] arises if facts
 16 in a lawsuit are alleged which if proved would give rise to the duty to indemnify, which then
 17 the insurer must defend.") (Internal quotations and punctuation omitted.). Because of
 18 CSU's actions, by putting the Turnbow facts in issue, it has created a conflict with its
 19 insureds justifying a requirement to provide the insureds with counsel. *State Farm Mut.*
 20 *Auto Ins. Co. v. Hansen*, 131 Nev. 743, 748, 357 P.3d 338, 341 (2015). Counterclaimants
 21 have tendered the defense of the facts in the Turnbow claims in this case to CSU, which it
 22 has declined to accept. Counterclaimants contend that refusal by CSU is an additional
 23 specific breach of CSU's duty of good faith and fair dealings owed its insureds.

24 ///

25 ///

26

27 ¹ See, CV20-00080 (*Turnbow v. Red Rock Hounds*), presently pending in the
 28 Second Judicial District Court of the State of Nevada, in and for the County of Washoe.

1 It is the facts supporting the claims brought against these parties by Turnbow
2 to which the duty of defense attaches. The forum in which those claims are stated is not a
3 determining factor. FRCP 15(a).

4 This case is in its nascent stage, so prejudice to CSU from allowing the
5 amendment is highly unlikely. Denial of leave to amend would be prejudicial to CSU's
6 insureds, because it could result in foreclosing such a claim in the future, and, at a
7 minimum, would lead to more litigation.

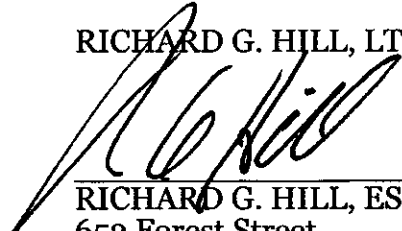
8
9 WHEREFORE, defendants/counterclaimants pray the Court grant them leave
10 to file their first amended counterclaim; and for such other, further, and additional relief
11 as seems just to the Court in the premises.

12 **AFFIRMATION Pursuant to NRS 239B.030**

13 The undersigned does hereby affirm that the preceding document does not
14 contain the social security number of any person.

15 DATED this 9th day of October, 2020.

16 RICHARD G. HILL, LTD.

17
18 
19 RICHARD G. HILL, ESQ.

20 652 Forest Street
21 Reno, Nevada 89509
22 Attorneys for Red Rock Hounds
23 and Barbara Lynn Lloyd
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of RICHARD G. HILL, ESQ., and that on the 8th day of October, 2020, I electronically filed the foregoing **Motion for Leave to File and Serve First Amended Counterclaim** with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Griffith H. Hayes, Esq.
Daniel B. Cantor, Esq.
Litchfield Cavo LLP
3993 Howard Hughes Parkway, Ste. 100
Las Vegas, Nevada 89169
Hayes@LitchfieldCavo.com
Cantor@LitchfieldCavo.com
Attorneys for Plaintiff, CSU

Curtis B. Coulter, Esq.
Coulter Harsh Law
403 Hill Street
Reno, Nevada 89501
Curtis@coulterharshlaw.com
Attorney for Tracy Turnbow

John C. Boyden, Esq.
Erickson Thorpe & Swainston, Ltd.
99 W. Arroyo Street
PO Box 3559
Reno, Nevada 89505
jboyden@etsreno.com
Attorney for Beehive Insurance Agency

Prescott Jones, Esq.
Emily K. Dotson, Esq.
Resnick & Louis, P.C.
8925 West Russell Road, Suite 220
Las Vegas, Nevada 89148-2540
Attorneys for Intervenor American Reliable Ins. Co.




EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGES
1	Answer, Affirmative Defenses, and First Amended Counterclaim	33